

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 03-0359P

Sales and Use Tax

For Tax Years 2000 through 2002

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ISSUE

I. Tax Administration—Negligence Penalty and Interest

Authority: IC 6-8.1-10-1; IC 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests a ten percent (10%) negligence penalty and interest.

STATEMENT OF FACTS

As the result of an audit, the Indiana Department of Revenue ("Department") issued proposed assessments, ten percent (10%) negligence penalty and interest. Taxpayer protests the imposition of penalty and interest. Further facts will be provided as necessary.

I. Tax Administration—Negligence Penalty and Interest

DISCUSSION

The Department issued proposed assessments, a ten percent (10%) negligence penalty and interest for the tax years in question. Taxpayer protests the imposition of penalty and interest. The Department refers to IC 6-8.1-10-2.1(a), which states in relevant part:

If a person:

...

(3) incurs, upon examination by the department, a deficiency that is due to negligence;

...

the person is subject to a penalty.

The Department refers to 45 IAC 15-11-2(b), which states:

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Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to reach and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

45 IAC 15-11-2(c) provides in pertinent part:

The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section.

In this case, taxpayer incurred a deficiency which the Department determined was due to negligence under 45 IAC 15-11-2(b), and so was subject to a penalty under IC 6-8.1-10-2.1(a). Taxpayer offered no explanation and did not affirmatively establish that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by 45 IAC 15-11-2(c).

Also taxpayer protests imposition of interest. The Department refers to IC 6-8.1-10-1(e), which states:

Except as provided by IC 6-8.1-5-2(e)(2), the department may not waive the interest imposed under this section.

Taxpayer has not provided any documentation in support of its protest of the imposition of interest and the Department may not waive interest under IC 6-8.1-10-1(e).

FINDING

Taxpayer's protest is denied.